

LAW OFFICES
MCKENNA, JR., ATTORNEYS AT LAW

JAMES A. MCKENNA, JR.
VERNON L. MCKENNA
DAVID S. STEVENS
LEONIDAS P. EMMERSON

TELEPHONE NATIONAL 8-2931
TOP FLOOR, BROADCASTING • TELECASTING BUILDING
1735 DESALES STREET, N.W.
WASHINGTON 6, D. C.

May 10, 1954

Miss Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D.C.

Dear Miss Morris:

This letter is written on behalf of Metropolitan Television Co., Inc., permittee of KOA-TV, Denver, Colorado.

At the present time KOA-TV is operating pursuant to a temporary authorization utilizing the 25-kw transmitter and antenna specified in its construction permit, but located on a temporary tower 20' above ground. The temporary tower has been utilized since the permanent tower was destroyed during the construction period by a severe wind storm.

The construction work on the permanent 300' tower has been substantially completed and it is believed that by Thursday, May 13, 1954, it will be possible to install the permanent antenna atop the permanent tower. The station desires to continue operation while the antenna is being moved to the permanent tower and has made arrangements to install an RCA single-batwing antenna atop the temporary 20' tower while the transition is being made.

Special temporary authorization is requested, therefore, commencing Thursday, May 13th, to utilize the 20' tower and single-batwing antenna while the transition is being made, and upon completion of the transition, immediately to commence operation with the higher permanent antenna.

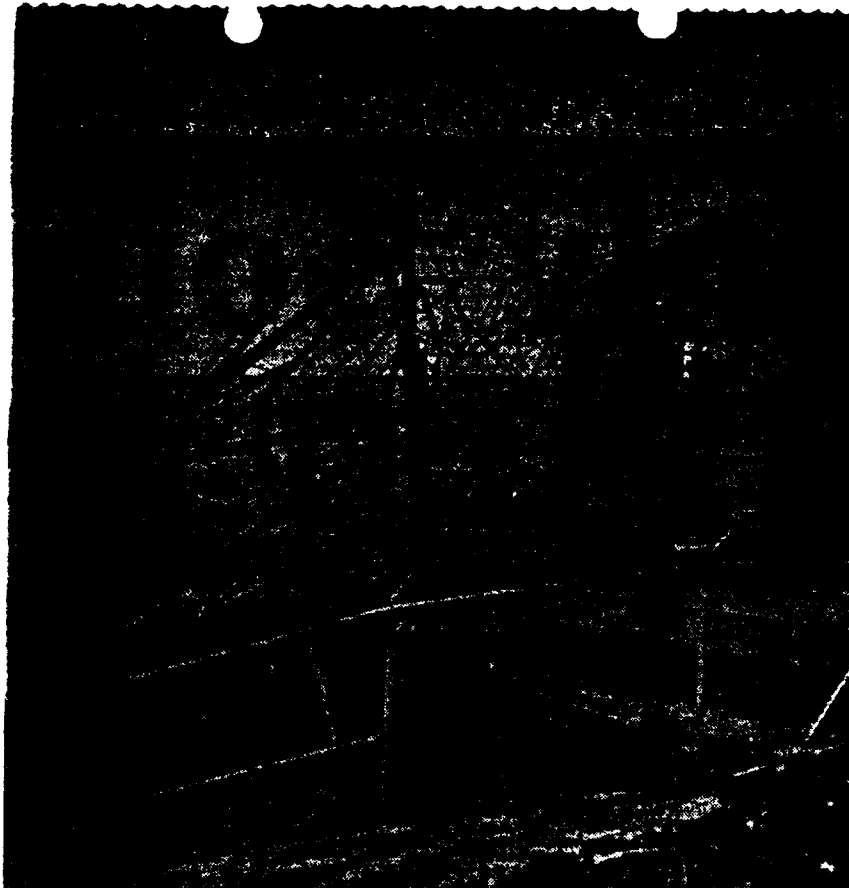
Very truly yours,

James A. McKenna, Jr.

C O P Y

040098

Shuman
 du Jan 6
 File KOA
 Eng.



Transmission tower of KOA-TV stands over the transmitter site on Lookout mountain. The big tower was blown down by high winds and is the second tower lost by KOA.

DAMAGE MAY COMPARE LOSSES OF MID-1930'S

COMMUNICATIONS COM.
RECEIVED
MAR 17 1963
 FIELD E & M BUREAU
 MAIL & FILES

The station on the air for 17 hours and 17 minutes. The Seattle manager of KOA radio and television said a temporary station was established in the city of Seattle. The station was able to broadcast from the city of Seattle. The station was able to broadcast from the city of Seattle. The station was able to broadcast from the city of Seattle.

Hardest snow reported in Colorado Thursday was at Leadville where 32.0 inches of moisture was recorded. The fall came after a Wednesday storm which left snow up to 14 inches in some mountain areas.

Rain and snow were reported in Idaho Thursday night and the Pacific moist air mass was expected to move over Wyoming and the Colorado mountains by late Friday or early Saturday.

Hardest winds in the state Thursday were clocked at the Rocky Flats atomic-energy commission plant near Boulder. Gusts there were reported as high as 95 miles per hour.

The storm toppled the \$80,000 KOA-TV 330-foot transmitting tower on Lookout mountain west of Denver Thursday at 3:37 p. m.

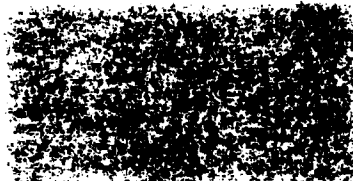
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Additional Financial Data

Exhibit 1 submitted with the original application (File No. MEPC-2230) on August 10, 1955 discusses the method of financing the proposed increase in the height of the supporting tower of Station KOA-TV. This is a supplement to that statement.

After the KOA-TV supporting structure was destroyed on May 10, 1955, Metropolitan Television Company's insurance company paid the applicant \$67,500.00 for the loss incurred, which sum thereafter became a cash asset of the corporation.

Appended hereto is a balance sheet of the applicant as of July 31, 1955, which balance sheet shows that Metropolitan Television Company has more than sufficient net quick assets, particularly cash and accounts receivable, over current liabilities to meet the total estimated construction cost of \$106,688.



RECEIVE

MAR 31 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COM
OFFICE OF THE SECRETAR

In re Application of
NBC Subsidiary (KCNC-TV), Inc.

For Renewal of License of
Television Station
KCNC-TV, Denver, Colorado

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)
)
)
)
)
)
File No. BRCT-921127KM

OPPOSITION TO PETITION TO DENY

Richard Cotton
Ellen Shaw Agress
National Broadcasting
Company, Inc.
30 Rockefeller Plaza
New York, NY 10112

James H. Rowe
Howard Monderer
John K. Hane
National Broadcasting
Company, Inc.
Suite 930 North
1331 Pennsylvania Ave., N.W.
Washington, D.C. 20004

March 31, 1993

041120

consolidate several television stations, including KCNC and KTVJ, on a new tower located essentially at the current KCNC tower site, and phasing out of all non-conforming towers. In contrast, KCNC desires to obtain conforming status for its existing tower and keep it.

Newsweb was not included in the TV Group because it has little, if any, unity of interest with members of the group. See Attachment 3 (Declaration of Thomas J. Ragonetti, Esq.) Newsweb's implicit request that the Commission force KCNC to alter the position it advocates before another governmental body is highly inappropriate.

B. Newsweb Has Not Shown That No Other Sites Are Available

A petitioner seeking enforcement of Section 73.635 must show that no alternative sites are available, so that the inability of the permittee to use a particular site unduly limits the number of television stations that can be authorized or unduly restricts competition among stations. If the alleged unavailability of alternative sites is based even partially on technical considerations, such a showing would require, at minimum, a comprehensive engineering study that explains and illustrates the lack of technically acceptable alternative sites.

No such showing is included with Newsweb's petition. Instead, Newsweb supplies only a list of general technical, geographic, and legal considerations that allegedly preclude the use of alternative sites. Newsweb provides no concrete support

for its assertions of geographic and legal constraints, and offers no support at all for its claims that certain technical requirements further restrict the possible alternative transmitter sites. Apparently, Newsweb expects the Commission to accept blindly its self-serving proclamation that Lookout Mountain is the only feasible site.

The only alternative site that Newsweb's petition to deny discusses and rules out is Mt. Morrison. Though another television tower is located on Mt. Morrison, Newsweb claims that "technical studies" show that KTVJ could not supply a city grade signal to Boulder from that site.⁴ The "technical studies" are not supplied or even identified, and Newsweb's vague assertions about opposition to the use of Mt. Morrison by "the City of Denver" and "the [Jefferson County] Board" are completely unsupported. Petition to Deny at 19-20.⁵ Newsweb's cursory, unsupported claim that Mt. Morrison is not a feasible site for its transmitter does not justify its conclusion that Lookout Mountain is the only useable site.

In fact; there are a number of potential sites that Newsweb

⁴ Notably, Newsweb's most recent application modifying its proposed Lookout Mountain facilities (BMPCT-920612KG) also fails to provide city grade coverage to much of Boulder. See Attachment 4.

⁵ At a hearing before the Jefferson County Board of Commissioners on March 23, 1993, a representative of the owner of the Mt. Morrison site testified that, "On Mt. Morrison we offered space to Channel 14 [Newsweb] and they just said 'we're not interested.'" See Attachment 2, p. 6.

which consisted of arguments that other possible sites would face zoning challenges. After ten years of real and insurmountable zoning opposition, the Lookout Mountain site cannot be considered preferable to other technically suitable sites, such as Bighorn Mountain, where serious zoning opposition was merely anticipated.⁷

Another possibility that Newsweb does not address is Eldorado Peak, which has an unobstructed view of Boulder. Newsweb's petition to deny does not even address the availability of Eldorado Peak. However, Newsweb's 1983 opposition to KDVR's challenge to its specification of Lookout Mountain contended that Eldorado would simply be too expensive to develop:

Eldorado Peak is a relatively undeveloped mountain located about four miles south of Boulder. Boulder Telecasting determined that it would be prohibitively expensive to

⁷ Newsweb's opposition to KDVR's petition stated that it had ruled out Bighorn Mountain because

. . . the residents of Gold Hill began to express grave concerns about the anticipated effects of the television operation. The intensity of the controversy was reflected by a score of letters sent to Boulder Telecasting and to Boulder County officials.

Opposition to Petition for Reconsideration, (BMPCT-830426KM), filed August 31, 1983 by Boulder Telecasting Corporation, at p. 12. The letters sent in opposition to the Bighorn site pale in comparison to Jefferson County's steadfast refusal to grant a special use permit to Newsweb. Again, while only Newsweb knows its motives, the lack of evidence that Newsweb has made a real attempt to locate an alternative site in the past ten years suggests that Newsweb is only interested in constructing KTVJ if it can do so on Lookout Mountain.

develop Eldorado sufficiently to support a commercial UHF television operation. Adequate electrical power services presently do not exist anywhere near the top of the mountain; nor is there a road adequate to provide reasonable access.

Opposition to Petition for Reconsideration, BMPCT-830426KM, filed August 31, 1983 by Boulder Telecasting Corporation, at p. 13.

Whatever validity this argument might have held in 1983 has evaporated. Eldorado Peak has been developed as a communications site since 1979, and KBCO(FM), which is licensed to Boulder, has broadcast from Eldorado Peak since 1984. The site is zoned for this special use and contains a 180 foot multi-purpose communications tower that supports the antenna for KBCO(FM). Though the tower is fully loaded at present, the site could accommodate additional towers if necessary. The access road can be traversed with a flat bed truck and the site manager keeps the access road plowed in winter to ensure year-round access. See Attachment 6.

In short, any sites that were rejected in 1983 because of anticipated zoning difficulties or expense of development should have been given serious reconsideration by Newsweb at least by 1987, when it became clear that Jefferson County was not going to budge on its refusal to grant Newsweb a special use permit for Lookout Mountain. If indeed Newsweb only wants to get on the air to serve Boulder from a site that meets FCC technical requirements, its decade of dogged pursuit of Lookout Mountain, to the exclusion of all other sites, defies sound business

judgement. Lookout Mountain is not the only site from which Newsweb can serve Boulder, but it is the site that would give Newsweb's KTVJ the best coverage of Denver.

IV. Conclusion

Newsweb's petition to deny is based exclusively on a demand for relief under Section 73.635 of the Commission's rules. However, the Commission has previously ruled, twice, that Newsweb is not entitled to relief under that section in connection with its attempts to secure a transmitter site on Lookout Mountain. Moreover, Newsweb has failed to allege facts that would make a prima facie case for imposition of Section 73.635 against KCNC, even if the claim were not legally precluded. Therefore, the Commission should summarily dismiss Newsweb's petition to deny.

Respectfully submitted,

NBC SUBSIDIARY (KCNC-TV), INC.

By: 

Richard Cotton
Ellen Shaw Agress
NBC Subsidiary (KCNC-TV), Inc.
30 Rockefeller Plaza
New York, NY 10112

By: 

James H. Rowe
Howard Monderer
John K. Hane
NBC Subsidiary (KCNC-TV), Inc.
Suite 930 North
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Date: March 31, 1993

041138

CERTIFICATE OF SERVICE

I, Martha A. Shiles, do hereby certify that on this 31st day of March, 1993, I caused copies of the foregoing Opposition to Petition Deny of National Broadcasting Company, Inc. to be served via First Class postage, prepaid mail to:

Edward W. Hummers, Jr., Esq.
Fletcher, Heald & Hildreth
1300 N. Seventeenth Street
11th Floor
Roselyn, VA 22209

Martha A. Shiles
Martha A. Shiles

041139

Declaration of James MacDermott, Vice President and
Station Manager, KCNC-TV

041146

DECLARATION OF JAMES MACDERMOTT

I, James MacDermott, hereby declare as follows:

I am Vice President and Station Manager of KCNC-TV, Denver. I have read the Petition to Deny filed by Newsweb Corporation and I offer this statement in response.

As background, KCNC-TV has broadcast from its Lookout Mountain site since 1953. Though many communications towers are located on Lookout Mountain, KCNC-TV owns its site and its tower is not part of an antenna farm. The tower supports KCNC-TV's main antenna and hardware for the station's auxiliary services, and also supports other facilities for KFRX(FM) and KOA(AM). KCNC-TV's tower is the tallest on Lookout Mountain and does not conform to current zoning requirements.

I am aware that representatives of Newsweb have been attempting to obtain a special use zoning permit to build a new tower on Lookout Mountain. Representatives of Newsweb or Boulder Telecasting (its predecessor) have had discussions with KCNC-TV in the past about access across KCNC-TV's property to reach the property Newsweb has bought on Lookout Mountain, which is adjacent to KCNC-TV's property. In seeking a permit to use that site, Newsweb has presented a number of plans to the Jefferson County Board of Commissioners. I also understand that in connection with work being done by a group composed of county staff, citizens, and industry representatives concerning revisions of land use regulations, Newsweb has proposed at least once that an existing television tower be removed and replaced with a new tower that could accommodate its needs.

However, Newsweb has not aggressively or "repeatedly" solicited KCNC-TV to remove its tower and consolidate on a new tower. A thorough review of station records turned up only one proposal to KCNC-TV by Boulder Telecasting that involved removal of KCNC-TV's tower and consolidation on a proposed new tower. In 1988 Boulder Telecasting contacted KCNC-TV about removing KCNC-TV's existing tower and constructing a new tower that would accommodate the needs of KCNC-TV, KTVJ, and other users. Boulder Telecasting contended that KCNC-TV would enjoy an income stream from renters on the new tower. However, we did not pursue the proposal because we were unable to identify sufficient demand for additional tower capacity on Lookout Mountain to justify the investment or the expense and disruption of dismantling our existing tower. We have no records of any further requests by Newsweb that KCNC-TV move to a new tower until Newsweb's letter to KCNC-TV of December 22, 1992.

Newsweb's petition to deny also claims that KCNC-TV has refused to provide space on its tower for Newsweb's needs. I do not believe that anyone representing Newsweb has specifically asked to lease space for KTVJ's antenna on the KCNC-TV tower until very recently. Boulder Telecasting's 1988 proposal did not mention any desire to mount an antenna for KTVJ on KCNC-TV's tower.

In late December 1992 or early January of this year, we received a letter dated December 22, 1992 from Charles Gross of Newsweb. Mr. Gross' letter proposed that KCNC-TV and KTVJ co-

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locate either on KCNC-TV's existing tower or a new tower (which would require removal of KCNC-TV's existing tower). To the best of my recollection and based on a review of station records, this December 22, 1992 letter was the first time Newsweb formally proposed to rent space on KCNC-TV's tower for the KTVJ antenna. I discussed the request with Roger Ogden, KCNC-TV's General Manager, and though we ruled out removal of our existing tower, we concluded that we should explore Mr. Gross' proposal to determine whether it was technically feasible to accommodate KTVJ on KCNC-TV's tower and, if so, whether it made sense economically. We agreed to explore the possibility even before Newsweb informed us that it intended to petition to deny KCNC-TV's license renewal application.

In early January, 1993 I asked Mr. Gross to specify his requirements, and he responded on January 25, 1993 with a letter detailing the hardware Newsweb proposed to use. I immediately discussed Newsweb's needs with Bob Redwine, KCNC-TV's consulting structural engineer. Mr. Redwine concluded that the tower as currently configured could not accommodate Newsweb's needs, and estimated that a structural analysis to determine whether the tower could be modified to meet Newsweb's needs would cost about \$5,000. On February 9, 1993 I met with Mr. Gross in my office and related Mr. Redwine's conclusions. Mr. Gross asked if a "deal" was possible, and stated that Newsweb would not pay for an structural analysis unless KCNC-TV first signed a lease that was contingent upon certain events. Mr. Gross also said that if we

did not reach an agreement by March 1, 1993, Newsweb would file petitions to deny the renewal applications of all of the television stations operating from Lookout Mountain. I told him that we would not be pressured into making such an important decision and that the process of exploring the proposal, including a technical study and subsequent lease negotiations, if appropriate, would take more than two or three weeks.

After reviewing additional information supplied by Newsweb, on February 17 Mr. Redwine confirmed his opinion that studies would be required to determine whether KCNC-TV's tower could be modified to accommodate Newsweb's needs. Newsweb's attorney sent KCNC-TV's lawyers two proposed agreements totalling 23 pages constituting a proposed binding lease. I informed Newsweb that we would not expend the time and resources to negotiate a formal lease agreement before seeing the results of the structural analysis. (See attached letter). Newsweb did not agree to pay for the structural analysis until February 26, 1993, just one business day before it filed its petition to deny. Since then, Newsweb and KCNC-TV have been negotiating the terms of the study and by whom it will be done.

Contrary to Newsweb's claims, I am not aware that KCNC-TV has ever refused to allow Newsweb to use KCNC-TV's tower. I qualify this remark because Newsweb has been attempting to secure the Lookout site for ten years, and there is a possibility that it may have been casually mentioned at some point to some KCNC-TV employee. However, I have no recollection of any such request,

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and Mr. Ogden has told me that he has no such recollection. In any case, the KCNC-TV tower has been fully loaded for many years, so any earlier requests to use the tower would have met the same difficulties now faced.

Newsweb's claim that the six television stations that have hired Mr. Ragonetti to represent us before the County Board have done so in order to "frustrate" its attempts to obtain zoning for its tower is incorrect. Jefferson County has sought tower consolidation as a matter of policy, and the existing television stations broadcasting from Lookout Mountain have hired Mr. Ragonetti to represent our interest before the Board. The interest of those with existing towers on Lookout Mountain is to preserve valuable rights and the ability to continue to serve the public from their present locations. Newsweb appears to have a different objective. It has proposed the removal of at least one existing tower so that it can (possibly) obtain zoning for its own tower. KCNC-TV, alone or through its participation in the so-called TV Group, has never attempted to frustrate Newsweb's attempts to obtain zoning for its own tower.

Newsweb's petition to deny argues that Mt. Morrison is not a suitable transmitter site in part because of unspecified local opposition to use of that site. Channel 20, KTVD(TV) already operates from Mt. Morrison on a tower owned by Bear Creek Development Corporation ("Bear Creek"). On March 23, 1993 the Jefferson County Board of Commissioners held a hearing in Case ZA 92-3, "Amendments to Section 6 and Section 15 of the Zoning

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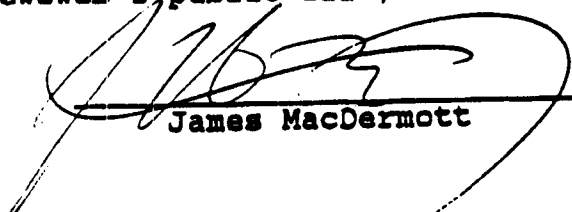
Resolution Regarding Non-conforming Uses and Planned Development Standards." At that hearing Kathryn Isenberger, testifying on behalf of Bear Creek regarding tower consolidation issues, stated

On Mr. Morrison we offered space to Channel 14 [Newsweb] and they just said, "We're not interested."

I have obtained a copy of the official audio "transcript" of the hearing and have confirmed that Ms. Isenberger made that statement.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

I have also read the Opposition to Petition to Deny, which is to be filed by our attorneys, and confirm that to the best of my knowledge and belief the facts alleged therein, except those obtained from FCC records and Newsweb's public file, are true.


James MacDermott

Date: March 29, 1993



**KCNC-TV
DENVER**

February 23, 1993

VIA TELECOPIER

Mr. Charles Frank Gross
Chief Financial Officer
Newsweb Corporation
1645 West Fullerton Ave.
Chicago, IL 60614

Dear Charley,

This will acknowledge receipt of your February 18 letter and will confirm our previous discussion.

As we have discussed, we are willing to explore the possibility of allowing KTVJ to use the KCNC tower, and we would have no objection to allowing you to use the tower if the proposal is economically viable for both parties and makes sense technically. As you know, our tower is currently loaded almost to capacity. Our structural engineering consultants have estimated the cost of a feasibility study to determine whether the tower can be strengthened sufficiently to hold the additional loads you propose would be about \$5,000.

We are still willing to authorize a feasibility study at your cost. If the results indicate that your hardware could be accommodated, I see no reason why we could not move forward to negotiate. However, after making a preliminary review of your requirements, our outside structural engineering consultants are of the opinion that a detailed study would show that the proposed antennas cannot be handled by the tower, even with strengthening. A copy of their letter expressing this opinion is enclosed.

I understand that you are unwilling to pay for a feasibility study until we enter into a lease agreement. Your lawyer has sent us proposed agreements totalling 23 pages. We simply cannot expend the significant resources required to negotiate a detailed lease agreement when the preliminary indication is that your hardware cannot be accommodated. Surely the appropriate order would be to have the feasibility study done before we try to negotiate an agreement of this complexity, especially since the feasibility study itself is likely to be an important component of our consideration in the negotiations.

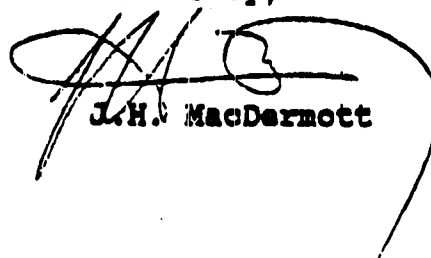
I understand that you are eager to work out a deal quickly, and we have no objection to moving forward. We can expedite but

041153

we cannot rush a project that requires careful technical, financial, and legal analysis. If a technical study shows that the proposal is promising, we can discuss a lease. Your lease draft raises many points that must be discussed and resolved, including accommodation of HDTV facilities, resolution of interference problems, zoning approval, the extent of tower strengthening required to accommodate your needs, disruption resulting from any tower modifications, rent, allocation of miscellaneous costs, and other issues.

Once again, we have no problem undertaking good faith negotiations with your company as soon as possible, once we have resolved the threshold technical issue. Please let me know if you would like us to retain our consultants to undertake a tower study so that we can move forward.

Sincerely,



J.H. MacDermott

041154

February 17, 1993



Jim MacDermott
KCNC-TV
P.O. Box 5012
Denver, CO 80217

RE: Newsweb Corporation Antenna Additions
Structural Fee Estimate

Dear Jim:

It is our understanding that Newsweb is discussing the possibility of placing up to 3 antennas on the KCNC-TV tower at Lookout Mt., Golden, Colorado. The antennas were described in the Newsweb letter of January 25, 1993. In our phone conversation I explained to you that the tower as currently configured would not meet EIA requirements with the proposed additions. There is a chance that the tower may have the capacity for the additions if the guys at levels 3, 4, and 5 were increased in size, however, we have not analyzed the tower for larger guys at this time.

We have estimated the additional antenna and transmission line loads as shown on the attached spreadsheet. When compared to KCNC's fully configured tower (including HDTV), these loads represent about 33% increase in wind loads and 13% increase in vertical loads. It is our opinion that a detailed analysis of the tower with larger guys at levels 3, 4, and 5 would tell us that the proposed antennas could not be handled by the tower. In addition, the guys at levels 1 and 2 might reach overstress under these new loads. The guy anchors would probably be adequate for the new loads, but would need to be reviewed also. If Newsweb would like to find out for certain whether or not the tower could be modified to handle their antennas, we would analyze the proposed configuration and report our findings for a fee of about \$5,000.

If you have any further questions after reviewing this information, please call.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bob Redwine".

Bob Redwine

encl Spreadsheet of estimated loads

cc file: KCNC

041155

KCNC-TV ANTENNA TOWER, LOOKOUT MOUNTAIN
 NEWSWEB ANTENNA LOADS
 100 mph Wind, no ice

	Level	Area (ft2)	Wind Load (#)	Weight (#)
Feeds				
Broadcast	600	375.00	25,494	6,000
Microwave	300	90.00	6,375	660
HDTV	650	650.00	43,987	7,800
		1115.00	75,855	14,460
Antennas				
Broadcast	600	60.00	1,950	1,770
Microwave	300	80.00	4,500	250
HDTV	650	50.40	2,298	800
		190.40	8,748	2,020
TOTALS		1305.40	84,603	16,480

041156

Declaration of David Layne

041169

DECLARATION OF DAVID LAYNE

I, David Layne, hereby declare as follows:

I am the Manager of Operations-Engineering for KCNC-TV, Denver, Colorado. In March 23 and March 25, 1993, I spoke by telephone with Mr. Bill Schuller regarding the ability of a communications site on Eldorado Mountain to accommodate a television station on Channel 14. During those conversations, Mr. Schuller provided the following information.

Mr. Schuller is the owner and manager of the Eldorado site. He and his son own 80 acres on top of Eldorado Mountain, which is located just south of Boulder. One acre of the property is zoned for special use. On that acre stands a 180 foot communications tower, which is fully loaded. Mr. Schuller plans to expand the site this spring and add a new 4500 square foot building to house communications tenants. The current site tenants include KBCO(FM), Boulder, various two way firms, microwave tenants, and cable TV companies.

The site is large enough to accommodate more towers, but the approval of Jefferson County would be required for new tower construction or expansion of the special use area.

The Eldorado site was approved by the county in 1979, and the first tenant was on site in 1980. KBCO moved to the site in 1984. The access road will accommodate flat bed trucks, and the road is maintained year round and is plowed in the winter.

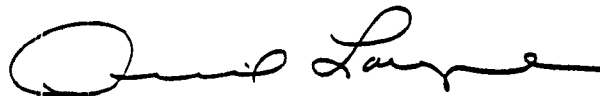
Mr. Schuller stated that he had received several telephone inquiries in the mid-1980's about Channel 14 moving to the site, but there was no follow-up.

On March 29, 1993 I sent a fax draft of a summary of our telephone conversations to Mr. Schuller and asked if he would sign a statement acknowledging its accuracy. He called me on March 30 and stated that there were several minor errors in my draft. He said that if I corrected those minor errors, he "would be willing to testify to the correctness of all information in the letter", but he stated that he would not sign any statement that had not been drafted by his attorney.

This statement includes the corrections noted by Mr. Schuller. I declare under penalty of perjury that the foregoing statements regarding my conversations with Mr. Schuller are true and correct to the best of my knowledge and belief.

3.30.93

Date



David Layne

041170



Federal Communications Commission
Washington, D.C. 20554

RM. 702

Makis

Oct 27 10 35 AM OCT 30 1998

DIST

Group W/CBS Television Stations Partners
600 New Hampshire Avenue, NW, Suite 1200
Washington, DC 20037

Gentlemen:

This concerns your application for a construction permit to construct a new Digital Television (DTV) facility for station KCNC-DT, Denver, Colorado. We are unable to act on this application until certain radiofrequency radiation (RFR) questions at the Lookout Mountain site are resolved. The Commission's Office of Engineering and Technology has reviewed the technical material submitted to us concerning radiofrequency (RF) exposure levels at the Lookout Mountain, Colorado, broadcast transmitting site. In particular OET staff have reviewed the two study reports from Richard Tell Associates (done for Jefferson County) and three study reports from Hammett and Edison, Inc., (one performed for CBS, Inc., and two performed for Lake Cedar Group, LLC). These reports document the results of analyses of the RF environment on Lookout Mountain using actual measurement data as well as prediction methodology. One of the Hammett and Edison reports also addresses the predicted affects on RF levels of the addition of DTV antennas at the site. OET also has data submitted via FAX from Mr. Alfred Hislop of the Canyon Area Residents Association (CARE) documenting measurements made by him and a colleague several weeks ago. These latter measurements were cited in earlier letters to the Commission from Deborah Carney of CARE.

There are several points that OET has made with respect to these various reports that are relevant to determining whether the Lookout Mountain site is now in compliance with FCC RF rules and, if so, will continue to be in compliance once new DTV antennas are installed and operational. We are requesting that you respond to these points, as appropriate, to help us in determining that the Lookout Mountain site is currently in compliance with FCC RF guidelines and whether it will be in compliance with these guidelines once the proposed antennas are operational.

Under FCC NEPA rules, when an application is received for a given site an evaluation of the entire site is triggered, not just an evaluation of the applicant's transmitter alone. It is not obvious that the applicants for new DTV antennas have actually certified that the site is now in compliance or will be in compliance once the DTV antennas are operational. This applies to the total environment (including contributions from all TV and FM radio antennas). Simply appending a copy of one or more of the study reports is not sufficient without a definitive statement of compliance. Although the Hammett and Edison studies conclude that the site is in compliance, and is predicted to continue to be in compliance, there are some issues that OET points to that need to be addressed as follows.

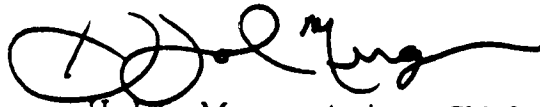
041326

- (1) Hammett and Edison (H&E) make recommendations for power reductions of certain antennas when tower work is required. However, it is not clear that all affected stations, both TV and FM, that would be party to a power reduction agreement, in accordance with H&E's recommendations, have agreed abide by the H&E recommendations.
- (2) H&E note that there are several unlicensed standby antennas at the site. The first issue is why these are unlicensed, and should they be licensed? Secondly, what will be the effect on the RF environment if these standby antennas are energized, which might happen during DTV or other construction at the site? H&E has provided a table of recommended maximum power levels for these standby antennas to ensure compliance with FCC limits for the public (ground-level exposure). However, no evidence is provided that the stations involved will abide by these power limitations in the future.
- (3) The H&E reports conclude site compliance with the FCC's spatially-averaged RF limits. The conclusions are that no publicly accessible location currently exceeds 66% of the general public limit and that after the DTV antennas are operational this maximum level will only rise to 76% of the limit. However, the actual spatially-averaged readings are not reported. Rather spatial-peak values are reported, and, in the case of the predictions for DTV antennas on the environment, a conversion factor of 0.6 is used to predict future spatially-averaged values for public exposure. Although the 0.6 factor may be conservative, there is no actual documentation to support using this value in other published standards or guidelines. For this reason, consideration might be given to conducting another comprehensive study at Lookout Mountain once all DTV antennas are operational to confirm the H&E predictions.
- (4) In making their spatially-averaged readings, H&E refers to a protocol referenced in a Canadian standard. This is never adequately explained and should be discussed in more detail so we can compare with other measurement techniques used by others, such as CARE.
- (5) The H&E measurements were performed using a Narda "conformal" probe. This device reads out in per cent of the "occupational/controlled" power density limits and a conversion factor of 5 must be used for comparison with the stricter "general population/uncontrolled limits." We would assume this conversion process was carried out, but, for the record, it should be mentioned to avoid any confusion over exact values reported.
- (6) H&E notes that no DTV application has yet been filed for station KWGN. Therefore, any affect this station's antenna might have on the RF environment is not reported. When this station files its application the additional contribution will probably have to be factored in. Any information on the effects of the KWGN antenna should be provided, if known.
- (7) The most difficult problem is probably some apparent inconsistencies between some of the measurements made by H&E and those more recently made by Mr. Hislop for CARE. Mr. Hislop sent OET data reporting readings made at four locations that are accessible to the public. The readings reportedly are in excess of FCC spatially-averaged limits. However, this is not what H&E found, although they may not have measured at the same locations. OET has some technical questions about the CARE measurements, their accuracy and how they were performed. However, OET cannot say definitively that they are wrong, and OET

OET has some technical questions about the CARE measurements, their accuracy and how they were performed. However, OET cannot say definitively that they are wrong, and OET staff are presently considering visiting the locations to conduct measurements at the locations in question.

Please respond to the above points , as appropriate, within sixty days so that we can proceed to process your application. If the above matters are satisfactorily addressed, and if any readings that the Commission might make at the site are in agreement, the site should be certifiable as being in compliance with FCC RF exposure guidelines.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. John Morgan', with a stylized flourish at the end.

H. John Morgan, Assistant Chief
Video Services Division
Mass Media Bureau

041328



FCC MAIL ROOM
Federal Communications Commission
Washington, D.C. 20554

OCT 27 10 35 AM '98 OCT 23 1998

DIS:

Group W/CBS Television Stations Partners
600 New Hampshire Avenue, NW, Suite 1200
Washington, DC 20037

Gentlemen:

BP CDT-980729KJ

This concerns your application for a construction permit to construct a new Digital Television (DTV) facility for station KCNC-DT, Denver, Colorado. We are unable to act on this application until certain radiofrequency radiation (RFR) questions at the Lookout Mountain site are resolved. The Commission's Office of Engineering and Technology has reviewed the technical material submitted to us concerning radiofrequency (RF) exposure levels at the Lookout Mountain, Colorado, broadcast transmitting site. In particular OET staff have reviewed the two study reports from Richard Tell Associates (done for Jefferson County) and three study reports from Hammett and Edison, Inc., (one performed for CBS, Inc., and two performed for Lake Cedar Group, LLC). These reports document the results of analyses of the RF environment on Lookout Mountain using actual measurement data as well as prediction methodology. One of the Hammett and Edison reports also addresses the predicted affects on RF levels of the addition of DTV antennas at the site. OET also has data submitted via FAX from Mr. Alfred Hislop of the Canyon Area Residents Association (CARE) documenting measurements made by him and a colleague several weeks ago. These latter measurements were cited in earlier letters to the Commission from Deborah Carney of CARE.

There are several points that OET has made with respect to these various reports that are relevant to determining whether the Lookout Mountain site is now in compliance with FCC RF rules and, if so, will continue to be in compliance once new DTV antennas are installed and operational. We are requesting that you respond to these points, as appropriate, to help us in determining that the Lookout Mountain site is currently in compliance with FCC RF guidelines and whether it will be in compliance with these guidelines once the proposed antennas are operational.

Under FCC NEPA rules, when an application is received for a given site an evaluation of the entire site is triggered, not just an evaluation of the applicant's transmitter alone. It is not obvious that the applicants for new DTV antennas have actually certified that the site is now in compliance or will be in compliance once the DTV antennas are operational. This applies to the total environment (including contributions from all TV and FM radio antennas). Simply appending a copy of one or more of the study reports is not sufficient without a definitive statement of compliance. Although the Hammett and Edison studies conclude that the site is in compliance, and is predicted to continue to be in compliance, there are some issues that OET points to that need to be addressed as follows.

04132'

(1) Hammett and Edison (H&E) make recommendations for power reductions of certain antennas when tower work is required. However, it is not clear that all affected stations, both TV and FM, that would be party to a power reduction agreement, in accordance with H&E's recommendations, have agreed abide by the H&E recommendations.

(2) H&E note that there are several unlicensed standby antennas at the site. The first issue is why these are unlicensed, and should they be licensed? Secondly, what will be the effect on the RF environment if these standby antennas are energized, which might happen during DTV or other construction at the site? H&E has provided a table of recommended maximum power levels for these standby antennas to ensure compliance with FCC limits for the public (ground-level exposure). However, no evidence is provided that the stations involved will abide by these power limitations in the future.

(3) The H&E reports conclude site compliance with the FCC's spatially-averaged RF limits. The conclusions are that no publicly accessible location currently exceeds 66% of the general public limit and that after the DTV antennas are operational this maximum level will only rise to 76% of the limit. However, the actual spatially-averaged readings are not reported. Rather spatial-peak values are reported, and, in the case of the predictions for DTV antennas on the environment, a conversion factor of 0.6 is used to predict future spatially-averaged values for public exposure. Although the 0.6 factor may be conservative, there is no actual documentation to support using this value in other published standards or guidelines. For this reason, consideration might be given to conducting another comprehensive study at Lookout Mountain once all DTV antennas are operational to confirm the H&E predictions.

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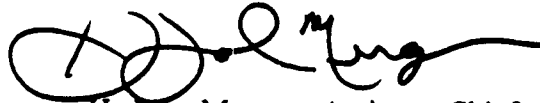
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Sincerely,

A handwritten signature in black ink, appearing to read 'H. John Morgan', with a stylized flourish at the end.

H. John Morgan, Assistant Chief
Video Services Division
Mass Media Bureau

041331

BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

Council for Public TV,
Channel-6, Inc.

For Renewal of Licensee of
Television Station
KRMA-TV, Denver, Colorado

File No. BRET-921127KS

To: Chief Mass Media Bureau

PETITION TO DENY

NEWSWEB CORPORATION

Edward W. Hummers, Jr.
Kathleen Victory

Its Attorneys

Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, VA 22209
(703) 812-0400

March 1, 1993

060655

SUMMARY

Newsweb Corporation is the permittee of television station KTVJ, Channel 14, Boulder, Colorado. For ten years, it has sought local authority to construct its facilities on Lookout Mountain, the only available site from which it may operate to place the requisite city grade signal over Boulder. The local zoning authority, desiring to consolidate the antenna towers now located on Lookout Mountain, has refused to grant the necessary zoning approval to construct the proposed KTVJ tower unless one, or more, of the six television stations now owning towers on Lookout Mountain agrees to relocate to the proposed KTVJ tower and dismantles its existing tower. To date, no station has agreed to tower consolidation and to relocate to the KTVJ proposed tower. Furthermore, each of the six television stations has failed to provide access to KTVJ to locate on its tower.

The Commission staff has stated that it will no longer extend the time within which Newsweb must construct KTVJ and that it must now complete construction of the station. As it has been impossible for Newsweb to construct its own tower, because none of the other television stations owning towers on Lookout Mountain has agreed to relocate to the proposed KTVJ tower or to provide access to KTVJ on its tower, Newsweb seeks Commission enforcement of Section 73.635 of its rules.

It is demonstrated herein that Lookout Mountain, a "unique site," is not being made available to Newsweb, that no other comparable site is available in the area and that the exclusive use of the site by the six television stations owning towers on Lookout Mountain unduly limits the number of television stations in the area and denies Boulder of local television service, in contravention of Section 307(b) of the Communications Act. Therefore, Newsweb petitions to deny the application for renewal of license of television station KRMA-TV and seeks enforcement of Section 73.635 of the rules.

060656

PETITION TO DENY

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060657

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BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In re Application of)
)
Council for Public TV,)
Channel-6, Inc.)
) File No. BRET-921127KS
For Renewal of Licensee of)
Television Station)
KRMA-TV, Denver, Colorado)

To: Chief Mass Media Bureau

PETITION TO DENY

Newsweb Corporation (hereinafter referred to as "KTVJ" or "Newsweb"), permittee of television station KTVJ, Channel 14, Boulder, Colorado, by its attorneys, hereby petitions to deny the above referenced application of Council for Public TV, Channel-6, Inc. (hereinafter referred to as "Channel 6") for renewal of license of television station KRMA-TV, Denver, Colorado. In support of this petition, the following is submitted.

I. Standing

At the present time, the following Denver television licensees own and operate transmitting facilities on Lookout Mountain, Jefferson County, Colorado:

KWGN, Inc., Channel 2, KWGN-TV
NBC Subsidiary, Inc., Channel 4, KCNC-TV
Council for Public TV, CH-6, Inc. Channel 6, KRMA-TV
McGraw-Hill Broadcasting Co., Inc., Channel 7, KMGH-TV
Combined Communications Company, Channel 9, KUSA-TV
Channel 31 Licensee Corp., Channel 31, KDVR

In addition, television station KCEC, Channel 50, is located on the KWGN-TV tower.

060658

On October 4, 1982, the FCC granted construction permit BPCT-790131KS to Newsweb's former subsidiary, Boulder Telecasting Corporation,¹ for a new television station to serve Boulder on Channel 14 at a site on Bighorn Mountain, located northwest of Boulder. On April 25, 1983, an application for modification of the construction permit was filed requesting authority to operate KTVJ from a site on Lookout Mountain (File No. BMPCT-830426KM).² As set forth in detail below, that application was finally granted on June 30, 1983, subject to a condition that KTVJ must protect land mobile facilities from objectionable interference. As detailed below, the de facto antenna farm on Lookout Mountain is the only site from which KTVJ can operate.³

Since the grant of its construction permit, KTVJ has unceasingly attempted to obtain the necessary local authority to construct its authorized facilities on Lookout Mountain. However, Jefferson County is imposing upon KTVJ its policy requiring consolidation of the various telecommunications towers on Lookout

¹ Effective December 26, 1991, the *pro forma* assignment of the KTVJ permit from Boulder Telecasting Corporation to Newsweb Corporation was consummated pursuant to Commission approval (File No. BAPCT-911203KI).

² KTVJ was awarded the Channel 14 construction permit pursuant to the settlement of a comparative proceeding under which the KTVJ application was amended to specify a competing applicant's proposed site on Bighorn Mountain. KTVJ subsequently learned that the site was unavailable.

³ The pending KTVJ modification application (BMPCT-920612KG) was filed in order to conform the construction permit to the precise tower and height specified in the zoning application now pending before the County. The proposed tower site is approximately 300 meters west of the present construction permit site, on the same parcel of land owned by Newsweb. The precise location on the parcel of land was chosen at the request of the County. As set forth herein, Newsweb has been unable to obtain the necessary local authority to construct at the original site or the site specified in the modification.

Mountain; that is, one or more of the existing licensees on Lookout Mountain must accept KTVJ as a tenant on one of its towers or relocate to the KTVJ proposed tower and dismantle its existing tower. To date, none of the licensees on Lookout Mountain has agreed to permit KTVJ to locate on its tower or to relocate to the KTVJ tower.

Section 73.635 of the Commission's rules provides that a renewal of a television station license will not be granted to a licensee controlling:

a particular site which is peculiarly suitable for television broadcasting in a particular area and (a) which is not available for use by other television licensees; and (b) no other comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee would unduly limit the number of television stations that can be authorized in a particular area or would unduly restrict competition among television stations.

47 C.F.R. § 73.635. Channel 6 controls such a site on Lookout Mountain and has not made it available to KTVJ on a fair and equitable basis. Its refusal results in direct injury to KTVJ in violation of Section 73.635. Therefore, KTVJ has standing to file this petition to deny as a party in interest under Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d), and the renewal process is the proper forum for examining the issue raised.⁴

II. The Applicability of Section 73.635

The Commission must enforce Section 73.635 upon a

⁴ See, *Midwest Communications, Inc.*, 7 FCC Rcd 159, 162 (1991).

demonstration that (a) Lookout Mountain is not being made available to KTVJ for use as a transmitter site; (b) no other comparable site is available to KTVJ in the area; and (c) the exclusive use of Lookout Mountain unduly limits the number of television stations in the area or unduly restricts competition among television stations. As will be shown below, each of the three elements is present here.

A determination of the applicability of Section 73.635, however, can only be made after an understanding of the efforts Newsweb has made to construct KTVJ and the circumstances in which it finds itself.

Immediately after receiving the permit to construct Channel 14 on Lookout Mountain on June 30, 1983, Centennial Broadcasting Corporation (hereinafter referred to as "Centennial"), then the permittee of television station KDVR, Channel 31, Denver, Colorado, filed a Petition for Reconsideration alleging that operation of KTVJ from Lookout Mountain would violate the minimum signal strength requirements of Section 73.685(a) of the FCC's Rules, and would also result in significant shadowing of the KTVJ signal over Boulder in violation of Section 73.685(b).

In its August 31, 1983, Opposition to the Centennial Petition, KTVJ set forth a detailed explanation of why specific alternative sites were unavailable or unsuitable, and why Lookout Mountain was the only viable transmitter site for KTVJ.⁵ Despite the pendency

⁵ To correct an engineering error, on July 28, 1983, KTVJ filed a second modification application, requesting authority to move the KTVJ transmitter approximately 1200 feet on Lookout Mountain (File No. BMPCT-830928KK).

of the Centennial Petition, KTVJ continued its efforts to obtain the necessary local authorizations to construct KTVJ on Lookout Mountain. In August of 1984, Mountain Contours Corp. (hereinafter also referred to as "KTVJ"), a company wholly owned by Fred Eychaner, the sole shareholder of Newsweb Corporation, sought a special use permit from the Jefferson County Board of County Commissioners (hereinafter referred to as the "Board") for the construction of KTVJ on a site it had purchased on Lookout Mountain. To address the Board's concerns about the potential environmental impact of the television transmitting facility, KTVJ proposed to construct a multi-purpose communications tower which would have accommodated not only the KTVJ antenna but also additional broadcast antennas which were located on separate towers on Lookout Mountain.⁶

In an Order released January 17, 1985, the Mass Media Bureau denied Centennial's Petition and affirmed the grant of KTVJ's modified construction permit. *Boulder Telecasting Corporation (KTVJ)*, slip op. (the "Lookout Mountain Order"). See Exhibit No.

1. In so doing, the Bureau stated:

At the outset, we recognize the difficulty for any applicant for Channel 14 to avoid objectionable interference to land mobile radio licensees, and we believe that KTVJ has made a valiant effort to resolve potential problems. Lookout Mountain was selected as the site for KTVJ's transmitter only after an exhaustive search for other possible sites led to the conclusion that Lookout Mountain is

⁶ Since 1985, Jefferson County has, as a matter of policy, sought consolidation of the telecommunications towers located on Lookout Mountain.

the only site available that can provide a quality television signal to the Boulder area without causing substantial harmful interference either to the Table Mountain Receiving Zone north of Boulder or to the land mobile radio licensees in the area or to both. . . . [We are unable to identify an alternate site, all factors considered, that would be significantly better. It therefore appears that Lookout Mountain may be the best location available for KTVJ's transmitter.

Lookout Mountain Order at ¶ 7 (emphasis added).⁷ The Bureau's decision became final on February 20, 1985.

Upon finality of the Lookout Mountain Order, KTVJ promptly accelerated its efforts to obtain local authority to construct KTVJ. It commenced contract negotiations with three local FM licensees regarding the use of a broadband FM antenna on the proposed tower. In addition, KTVJ began negotiations and coordination with local land mobile operators in order to comply with the land mobile interference condition in the KTVJ permit. KTVJ, at its own expense, developed an antenna design to eliminate by vertical and horizontal separation any objectionable interference to land mobile operations, and to maintain the necessary null consistent with the protection requirements for the Table Mountain Receiving Zone.

In March of 1985, the Board considered KTVJ's tower proposal. During its evaluation of the proposal, the Board required KTVJ to address whether it would cause interference to

⁷ The Bureau also added the following language to the condition upon the KTVJ permit regarding land mobile interference: "Program tests shall not be commenced under Section 73.1620(a) of the Rules and may only be started after specific authority is granted by the Commission." Lookout Mountain Order at ¶ 12.

land mobile operations in violation of the Jefferson County Telecommunications Land Use Plan (hereinafter referred to as the "County Plan"). The County Plan, attached hereto as Exhibit No. 2, is a set of advisory policy guidelines for the zoning of the telecommunications facilities in Jefferson County. With respect to tower siting, the County Plan recommends that "major broadcast facilities should primarily be consolidated on either Lookout Mountain or Mount Morrison."⁸ Exhibit No. 2 at 33. The County Plan further states:

Consolidation of existing towers with proposed towers should be encouraged as long as the visual impact of the proposed facility is comparable in the aggregate to those facilities removed or if it results in significant reductions in interference or health concerns.

Id. Finally, the County Plan recommends that the County require new broadcast facilities to demonstrate that there is no technically suitable or leasable space on towers which have already been built or already approved for multiple use. *Id.* at 35.

Despite assurances from KTVJ that it would take all necessary steps to eliminate objectionable interference to land mobile operations, the Board denied KTVJ's request for a special land use permit. Notwithstanding the federal preemption of the RF interference issue and notwithstanding KTVJ's commitment to accommodate the land mobile community, the Board concluded in part:

[T]he proposed special use as modified is not in conformance with the recommendation of the

⁸ For a detailed explanation of why Mount Morrison is not available as a site for KTVJ, see the discussion in part II. B. below.

telecommunications land use policy plan component of the Jefferson County Comprehensive Plan. The evidence does not adequately show that interference problems with public telecommunications have been resolved.

Resolution No. CC85-667, Board of County Commissioners of the County of Jefferson, State of Colorado, June 24, 1985, p. 3.

On July 23, 1985, KTVJ appealed the Board's adverse determination to the Jefferson County District Court. *Mountain Contour Corporation v. The Board of County Commissioners of the County of Jefferson, State of Colorado*, Case No. 85-CV-2245. During the pendency of the appeal, KTVJ continued its efforts towards alleviating the Board's concerns about the proposed KTVJ tower, particularly with regard to the removal of existing towers and the consolidation of antennas on a multi-station tower. Specifically, KTVJ held meetings or discussions with representatives of the Denver television stations regarding possible combined use of the KTVJ proposed tower. KTVJ also held meetings with radio licensees Westinghouse, Malrite and Jefferson Pilot, regarding the possible leasing of space on the proposed KTVJ tower. In addition, KTVJ maintained weekly contacts with County officials regarding possible changes in the County's requirements for the KTVJ tower.

By Order issued on December 1, 1987, the Jefferson County District Court affirmed the Board's denial of KTVJ's application for the special use permit. In lieu of appealing the District Court's decision, on May 25, 1988, KTVJ prepared and submitted a radically restructured land use proposal to the Board.

Specifically, at the behest of the Jefferson County Planning Staff and consistent with the County Plan (Exhibit No. 2 at 35), KTVJ requested that the Board rezone the Lookout Mountain site as a Planned Development Zone District (such district hereinafter referred to as a "PD"). In connection with KTVJ's revised proposal, representatives of KTVJ held at least 19 meetings with broadcast entities again seeking consolidation of broadcast facilities on the proposed KTVJ tower.

Despite KTVJ's intense efforts to address the concerns of all interested parties, on July 10, 1990, the Board denied KTVJ's PD application. In so doing, the Board made a number of findings, including the following:

That the proposal is not in conformance with the visual policies of the. . .[County Plan] in that the visual impacts from the height of the tower are not offset by the height of existing towers proposed to be removed. . . .

That the proposal is not in conformance with the Tower Policies in the. . .[County Plan] in that the proposed facility is significantly larger than the facilities proposed to be removed by the consolidation plan. . . .

That the tower has not been located to prevent interference to law enforcement and other land mobile radio providers on Lookout Mountain. Therefore, the proposal endangers the safety of residents of Jefferson County; it is incompatible with existing telecommunications uses on Lookout Mountain; and [the County Plan].

See, Resolution No. CC90-592, Board of County Commissioners of the County of Jefferson, State of Colorado, July 10, 1990, p. 2, Exhibit No. 3 hereto. The decision, reflecting the fact that no television licensee had agreed to relocate on the proposed KTVJ

tower and dismantle its existing tower(s), makes clear that the Board, through its policy requirements, has placed the burden on KTVJ to obtain the consent of its television station competitors to relocate on the proposed KTVJ tower as a condition for obtaining County approval to construct that tower. By their refusal to cooperate with KTVJ, the competing TV stations operating from Lookout Mountain have used the local public decision-making process to stop the construction of a competitor.

On July 17, 1990, KTVJ filed an application with the FCC for extension of the KTVJ construction permit. Therein, KTVJ informed the Mass Media Bureau of the Board's July 10, 1990 ruling, and further stated that KTVJ was considering its options with regard to the Board's decision. Those options included a request to the Board for reconsideration and/or a court appeal. Due to unavoidable delays attributable to the appeal process, KTVJ asked the Bureau for a six-month extension of the KTVJ construction permit.

On August 9, 1990, KTVJ appealed the Board's decision to the Jefferson County District Court, submitting one claim for relief on state law grounds and three claims on federal constitutional grounds. During the pendency of KTVJ's appeal, the Chief of the Television Branch, by letter action dated October 31, 1990 (hereinafter referred to as the "First Letter Ruling"), granted KTVJ's request for a six-month extension, but stated that the Commission "[does] not expect to consider another extension unless a modification for a new site has been filed." On December 7,

1990, KTVJ filed a Petition for Reconsideration with the Bureau, requesting reconsideration of the First Letter Ruling insofar as it (1) required KTVJ to change transmitter sites as a precondition to any further extension of the KTVJ construction permit, and (2) suggested that KTVJ must address any alleged interference to land mobile communications prior to issuance of such an extension.

By letter action dated February 6, 1991 (hereinafter referred to as the "Second Letter Ruling"), the Chief of the Bureau's Video Services Division denied the KTVJ Petition, albeit stating that the Bureau is ". . . not concerned with the land mobile issue. In that connection, [the Bureau] ha[s] already conditioned the grant of [KTVJ's] construction permit on the satisfactory resolution of any objectionable interference problems." At no point in the Second Letter Ruling did the Bureau directly address its own prior findings in the *Lookout Mountain Order*, the pendency of KTVJ's court appeal or the relationship between KTVJ's appeal and availability of the Lookout Mountain transmitter site. An Application for Review of the Second Letter Ruling is pending before the Commission.

In a decision dated March 5, 1991, the Jefferson County District Court denied KTVJ's state law claim but withheld judgment on its federal constitutional claims pending trial. *Mountain Contours Corp. v. The Board of County Commissioners of Jefferson County*, No. 90CV3042, Exhibit No. 4 hereto. In doing so, the District Court declared that the Board's finding with regard to radio frequency interference was beyond the Board's jurisdiction,

affirming that "[t]he Federal Communications Commission has exclusive and preemptive authority to regulate technical matters regarding broadcasting on the nation's airways.". *Id.* at 5, citations omitted. In an Order dated January 29, 1992, the District Court granted Jefferson County's Motion for Summary Judgment on KTVJ's constitutional claims. Exhibit No. 5. On March 16, 1992, KTVJ filed an appeal of the District Court's January 29 decision with the Supreme Court of the State of Colorado. On March 31, 1992, the Colorado Supreme Court granted a motion by the County to transfer the case to the Colorado Court of Appeals, where the case remains pending.

KTVJ has continued to negotiate with the County for authority to construct its proposed tower. The County, in turn, has continued to impose its policy requiring consolidation of the various telecommunications towers located on Lookout Mountain. To that end, the County, in January, 1991, formally requested the cooperation of the telecommunications industry in defining consolidation options for an industry-based plan for tower consolidation. The County invited the major factions of the telecommunications industry, including television licensees, radio licensees, and land mobile radio users, together with site owners and future users, including Channels 12 and 14, to join in a cooperative industry effort to develop a tower consolidation plan. The licensees of Channels 2, 4, 6, 7, 9 and 31 (hereinafter referred to as the "TV Group") have formed a working group represented by Thomas J. Ragonetti, Esquire, to present their plan

for broadcast towers. The TV Group is chaired by the General Manager of Channel 6. KTVJ has informally and formally requested that it be permitted to join and participate in the TV Group, which includes Channel 6, and that it be considered in any plan for tower consolidation presented by the TV Group. The TV Group has steadfastly refused to permit KTVJ to join, or to consider KTVJ, or any other similar television licensee/future user of Lookout Mountain, in any plan for tower consolidation.

The TV Group, by letter dated January 31, 1992, and later supplemented by letter dated April 22, 1992, submitted a plan for broadcast tower consolidation on Lookout Mountain. Exhibit No. 6 hereto. That plan does not mention KTVJ or its operation from Lookout Mountain. Further, the plan commits the TV Group to work with the County, but only with the other television broadcasters presently operating on Lookout Mountain. Exhibit No. 6 at 3-4.

Anticipating that it would be precluded from the TV Group, by letter dated February 10, 1992, KTVJ submitted its own tower consolidation proposal for Lookout Mountain. Exhibit No. 7 hereto. That plan presented a balanced approach recognizing the legitimate needs of all licensed users as well as potential future users of Lookout Mountain. The KTVJ plan would require that "consolidated tower systems. . . be made available to all present and future telecommunications facility users for initial use and expansion on a fair and equitable basis." Exhibit No. 7 at 7.

On April 27, 1992, Jefferson County sponsored a telecommunications workshop to discuss the tower consolidation

plans submitted by the various parties. That workshop was attended by County staff, and representatives of Lookout Mountain residents and the communications industry. At the meeting, the technical representatives of the industry acknowledged that Lookout Mountain is the perfect site for consumers and broadcasters. Mr. Ragonetti, for Channel 6 and the other television licensees, stated that the TV Group ". . . was not willing to include Channel 14 or other new users in the consolidation planning effort, and planning will continue for existing broadcaster interests and will not include KTVJ or others in that effort." Declaration of Gilbert F. McNeish, Esquire, Exhibit No. 8 at ¶ 7.

The TV Group, KTVJ and representatives of other interested parties have been meeting weekly with the County with regard to new regulations governing Lookout Mountain and tower consolidation. To date, Channel 6 and the other television licensees have steadfastly refused to include KTVJ in the TV Group or to permit KTVJ to locate on one of their towers.

The failure of Channel 6 and the other television licensee members of the TV Group to permit KTVJ to locate on one of their towers, or to relocate on the proposed KTVJ tower, is directly responsible for the present inability of KTVJ to construct its transmitting facilities on Lookout Mountain. Gilbert F. McNeish, Esquire, an expert in the laws, regulations, procedures and policies applicable to zoning matters in Jefferson County is of the opinion that:

with the approval of the tower owner, KTVJ
could locate on an existing tower on Lookout

Mountain without any further zoning approval by the County. Therefore, the refusal by the owners of existing towers to permit such co-location directly thwarts the construction and operation of KTVJ.

Exhibit No. 8 at ¶ 4. Mr. McNeish is also of the opinion that:

the only way KTVJ will be able to operate from Lookout Mountain is, (1) it is permitted to locate on an existing television tower; or (2) at least one of the television stations currently operating from Lookout Mountain consolidates its tower by relocating on the proposed KTVJ tower and removing its existing tower facility.

Id. at ¶ 10.

Newsweb, by the filing of petitions to deny, has sought to invoke Section 73.635 with regard to the acquisition of stations KEZW(AM) and KOSI-FM by Tribune and KDVR(TV) by Renaissance Communications Corp. In *D & D Broadcasting, Inc.*, 7 FCC Rcd 8082 (1992), the Commission found that Newsweb lacked standing to file a petition to deny an assignment application to enforce Section 73.635 and that it had not made a *prima facie* case that Tribune had an obligation to give KTVJ access to its towers. *Id.* at 8083. With regard to the acquisition of KDVR, the Video Services Division concluded that Newsweb did not have standing to petition to deny the assignment and that "it was free to pursue this alleged violation with the buyer." *Letter to Renaissance Communications Corp.*, p. 1, January 11, 1993, FCC Ref. 8940-PRG. Considering the matter as an informal objection, the Division denied the petition stating: "The Commission has found that the Denver market is served by a substantial number of television broadcasters, and that the rule therefore does not apply in that market," citing *D & D*

Broadcasting. *Id.* at 2. This is an incorrect interpretation of the Commission's holding. More precisely, the Commission held that Newsweb "had not met its burden under Section 73.635(c)." *D & D Broadcasting* at 8084.

As more fully set forth below, Newsweb has continued its efforts to reach agreement with Channel 6 and/or the other TV Group members, either to locate on one of their towers or to relocate one of them to the proposed KTVJ tower. To date, no agreement has been reached.

A. Lookout Mountain Is Not Being Made Available to KTVJ

It is clear from the above, that KTVJ has been denied access to Lookout Mountain by the refusal of the members of the TV Group to permit KTVJ to locate on an existing tower or to relocate one of their stations to the proposed KTVJ tower. Furthermore, the TV Group has refused KTVJ's participation in the Group's efforts and proposals in response to the Board's plans for tower consolidation on Lookout Mountain. Notwithstanding such refusals, KTVJ has continued to seek access from each individual television tower owner on Lookout Mountain.⁹

To that end, Charles F. Gross, Chief Financial Officer of

⁹ The filing of petitions to deny the renewal applications of all of the television licensees on Lookout Mountain is consistent with the action taken by the Commission in *WTCN Television, Inc.*, 14 F.C.C. 2d 870 (Rev. Bd. 1968) and *United Television, Inc.*, 54 F.C.C. 2d 291 (1975), wherein all of the VHF television licensees were ordered to make their antenna structures available to future UHF permittees and licensees, without Commission selection of which tower was to be made available. The selection was left to the VHF licensees who were ordered to file with the Commission, within 60 days, the terms and conditions under which a structure was to be made available. A similar order here placing the burden on the TV Group to resolve exactly how Section 73.635 is to be implemented is appropriate.

Newsweb, has communicated with Donald Johnson, President & General Manager of Channel 6 in writing and by phone. See Exhibit No. 9 hereto. Newsweb has agreed to pay all of the costs of locating on the Channel 6 tower or, alternatively, to provide an attractive financial package were Channel 6 to relocate to the proposed KTVJ tower, which would provide superior coverage because of increased height. Mr. Johnson has indicated that it would be more practical to relocate Channel 6 to the proposed KTVJ tower than for KTVJ to locate on the existing Channel 6 tower. However, Mr. Johnson also indicated that it would not be sufficient for Newsweb to only cover all of the costs of construction and provide rent free tower space to Channel 6 without the further payment of some unspecified additional financial incentive. Further, Mr. Johnson expressed a reluctance to relocate on the KTVJ tower were Channel 12 also permitted to locate thereon. Newsweb is willing to continue negotiations and it awaits further word from Channel 6. Until such time as Channel 6 agrees to provide access to KTVJ, Newsweb seeks enforcement of Section 73.635.

B. No Other Comparable Site Is Available

The location of KTVJ on Lookout Mountain, as the Commission's records with regard to the KTVJ construction permit clearly demonstrate, has been continually contested by numerous parties. It is important to note that no party has been able to demonstrate that an alternative site is available to KTVJ. The reason is simple; none exists. The Commission itself has ruled that Lookout Mountain is "the best location available for KTVJ's transmitter."

Lookout Mountain Order at ¶ 7.

Limiting the selection of a KTVJ transmitting site are the following factors:

- a. The protection of Channel 14, Lamar, CO; Channel 15, Leadville, CO; and Channel 21, Colorado Springs, CO.
- b. The placement of a city-grade signal over Boulder.
- c. The effect of terrain as Boulder is a relatively low area completely surrounded by high terrain, except where Boulder Creek drains to the northeast. The Rocky Mountain Front Range towers to form a western boundary from the north counter clockwise to the south of Boulder. At the southwest edge of the city stand gigantic sheets of rock known as the Flatirons. A high transmitting point is, therefore, required. See Exhibit 10 hereto.
- d. The protection of the Table Mountain Radio Receiving Zone from objectionable interference (See § 73.1030(b)). The Receiving Zone is approximately five miles north of Boulder.
- e. The unavailability of most of the high land because it is owned either by the federal government or by the governments of local political entities; some areas are designated on the National Register for Historic Places. Bighorn Mountain is such an example.
- f. The protection of environmentally sensitive areas which are protected by state and local land use regulations.
- g. The protection from objectionable interference of other communications transmitting facilities, including many land mobile operations, which are concentrated at antenna farms.
- h. The air safety protection requirements of Stapleton International Airport and the new Denver international airport now under construction.
- i. The requirement that the site must be accessible by all-weather roads, have adequate power for high power television transmission facilities and water adequate to support a high power UHF transmitter.

Because of these factors, Jefferson County has determined that "major broadcast facilities should primarily be consolidated on